IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

**FIRST APPEAL NO.928 OF 1989**
**ALONGWITH**
**CIVIL APPLICATION NOS.2998 OF 1990 AND 4367 OF 2004**

Mohanraj Bhiku Gandhi )
Maruti Galli, Near R.T.O. )
Ratnagiri. ).. APPELLANT

Versus

1) Kadamma Nanumanta Reddy )
Adult, mother of deceased )
Resident of Munnegal, Head-Post )
Saidpur, Taluka Yedgir )
District Gulbarga, Karnataka )

2) New India Assurance Company Limited )
having office at New India Assurance)
Building, 87, Mahatma Gandhi Road )
Fort, Bombay 400 001. ).. RESPONDENTS

Mr.Rajesh Kachare i/b.Ravi Kachare for the Appellant.

Mr.Vijay S.Gharat for Respondent No.1.

Mr.M.B.Kotak for Respondent No.2.

**CORAM: SMT.NISHITA MHATRE, J.**

**JUDGMENT RESERVED ON : 25TH NOVEMBER 2004**

**JUDGMENT PRONOUNCED ON : 13TH JANUARY 2005**

**JUDGMENT :**

. This First Appeal impugns the Award dated 14th December 1988 of the Motor Accidents Claims Tribunal for Greater Bombay made in Application No.1958 of 1986. The Tribunal has awarded compensation by directing the Appellant to pay an amount of Rs.36,000/- to the Applicant i.e. Respondent No.1 herein along with 12% interest per annum from the date of the application till realisation and proportionate costs of the application.

2. On 30th January 1984, an accident occurred when a lorry bearing No.MHT-4438 dashed against a cyclist Yengappa Nanumanta Reddy. This happened around 10.00 p.m. at Chembur. An FIR was lodged and a claim was filed under the Motor Vehicles Act, 1988 by Respondent No.1 who is the mother of the deceased Yengappa Nanumanta Reddy for compensation amounting to Rs.50,000/-.

3. This claim was opposed by the Appellant claiming that the lorry itself was not in use when the accident took place. The driver of this lorry was not arrested and, therefore, the Appellant claimed that he is not liable to pay any compensation. It appears that the claimant i.e. Respondent No.1 had not made the Insurance Company a party to the claim application possibly because she had not been able to obtain particulars from the Regional Transport Office regarding the Insurance Company of the vehicle in question. The Appellant also did not bother to state in his Written Statement that the vehicle was insured.

4. The Appellant produced a certificate from the Regional Transport Office, Ratnagiri in order to establish that the vehicle was not in use on the relevant date. Evidence of various witnesses was led before the Tribunal in support of the claim application.

The Appellant examined himself and denied the involvement of the lorry.

5. The Tribunal being satisfied with the evidence led by Respondent No.1 held that the accident had occurred due to the rash and negligent driving of lorry MHT-4438. The Tribunal was of the view that the certificate produced by the Appellant showing "non-use" was a suspicious document and that it indicated that the "non-use" certificate could not really prove that no accident had occurred involving the lorry. The witnesses examined on behalf of Respondent No.1 were believed by the Tribunal and, therefore, it came to the conclusion that the accident had occurred on account of rash and negligent driving of the driver of the lorry. The Tribunal has awarded compensation of Rs.36,000/- together with interest @ 12% per annum from the date the application was filed.

6. Being aggrieved by the Award, the Appellant has preferred this Appeal. After the Appeal was admitted on 27th November 1989, a Civil Application was preferred by the Appellant in order to place on record three documents, namely, the Insurance Policy in respect of the vehicle showing that the vehicle was insured from 20th October 1983 till 19th October 1984, a certificate issued by the Assistant Regional Transport Officer, Ratnagiri on 21st April 1990 indicating the "non-use" of

the vehicle for a particular period and a certificate issued on 24th April 1990 in Marathi from the Regional Transport Office, Ratnagiri indicating that the earlier certificate issued in respect of "non-use" contained some errors and, therefore, a fresh certificate had been issued on 21st April 1990 by the office. This Civil Application, after being admitted, was to be heard along with the First Appeal. In the meantime, the Insurance Company has been added as a party to the First Appeal on the basis of an order passed on 5th October 1990 in Civil Application No.2999 of 1990. After the First Appeal was heard for sometime, Civil Application was lodged by the Insurance Company on 1st November 2004 praying that the Appeal be dismissed against insurer or be remanded to the Tribunal as the Insurance Company had no opportunity to oppose the application. Both the First Appeal and the Civil Application have been heard together.

7. The learned Advocate for the Appellant submits that assuming the vehicle was in use and the certificate issued by the Regional Transport Officer is not to be accepted, the fact that the vehicle was insured for the relevant period must be taken into account. He submits that this Court, in Appeal, can decide whether the Insurance Company is liable. He supports this contention by relying on a judgment of the Apex Court in the case of *Urmilla Pandey and others* vs. *Khalil Ahmad*

*and others*, **1994 ACJ 805**. He submits that the vehicle was hypothecated with the Bank of Maharashtra and the Bank had ensured that the vehicle was insured with New India Assurance Company Limited. According to the Appellant, he had no knowledge of the vehicle being insured with the Insurance Company i.e. Respondent No.2 herein and, therefore, this fact was not brought to the notice of the Tribunal by him in the proceedings before it. The learned Advocate submits that Regional Transport Office's certificate which has been issued after the Appeal was filed is required to be considered by the Tribunal and, therefore, the application is required to be either remanded or in any event the Insurance Company would be liable to pay the amount awarded by the Tribunal.

8. Mr.Gharat, learned Advocate for Respondent No.1, submits that Respondent No.1 is not concerned with the dispute between the Appellant on the one hand and the Insurance Company on the other hand. He submits that once there is an award made in favour of the claimant, it is for the Appellant to satisfy the award and if the Insurance Company is also liable under the policy, it is for the Appellant to claim the amount from the Insurance Company. He submits that the Applicant has been denied compensation from over a period of eleven years since the accident occurred and she should not have to undergo the entire litigation afresh. He submits that the

registration certificate produced by the Appellant does not take the case of the Appellant any further. According to him, the genuineness of the certificate is in doubt since there is no indication as to whether in fact the vehicle was in "non-use" on the relevant date. The certificate merely shows that from the intimation given by the owner of the vehicle and on payment made by him, the certificate was issued to indicate that the vehicle was in "non-use" for the period from 1st November 1980 to 21st December 1982 and from 3rd May 1983 to 31st December 1986. According to the learned Advocate, the certificate dated 24th April 1990 which is also annexed to the Civil Application indicates that the earlier certificate dated 3rd September 1984 which had been produced before the Tribunal at the trial contained some errors. However, this information was also given by the owner of the vehicle to the Regional Transport Office vide his letter dated 24th April 1990. Therefore, the genuineness of these two certificates cannot be accepted according to the learned Advocate. He urges that the Civil Application of the Insurance Company be dismissed as it has been taken out ten years after they were added as a party to this Appeal. He submits that had the Insurance Company really wanted to contest the claim itself, it should have filed the Civil Application much earlier rather than allowing the matter to remain pending in this Court for over ten years and then to seek a remand at this stage.

9. Mr.Kotak for Respondent No.2 Insurance Company submits that the Civil Application No.4367 of 2004 filed by the Insurance Company will have to be allowed since the Insurance Company was not a party to the proceedings before the Tribunal and it had no opportunity to defend itself before the Tribunal. Furthermore, he submits that assuming the vehicle was insured, the Insurance Company could always oppose the claim on various grounds, namely, the limit of the liability under the insurance policy, the policy conditions, etc.. Several judgments are relied on in support of the Civil Application.

10. Having given my anxious consideration to the facts before me, I am of the view that the Tribunal cannot be faulted for concluding that the Appellant should pay to Respondent No.1 a sum of Rs.36,000/- along with interest at the rate of 12% per annum. The Tribunal on the basis of the evidence led before it held that lorry No.MHT-4438 was involved in the accident. It has also concluded on the basis of the oral evidence before it that the accident occurred on account of rash driving of the lorry driver. On a perusal of the evidence led before the Tribunal, I find that the Tribunal has considered all the relevant evidence on record and has held that the claim had been proved and, therefore, Respondent No.1 was entitled to the

compensation.

11. The Certificates which are produced by the Appellant from the Regional Transport Office at Ratnagiri do not indicate in any manner that the Regional Transport Office had in fact verified that the vehicle was in "non-use" on the relevant date. Such a Certificate was issued only on the basis of the information given by the Appellant. Further, the certificate indicates that the information was given by the Appellant on 21st April 1990, years after the accident. Not a single letter has been produced either before the Tribunal or in the Appeal to show that the Appellant in fact had intimated the Regional Transport Office that the vehicle would be in "non-use" either from 1st November 1980 to 31st December 1982 or from 3rd May 1983 to 31st December 1986. The certificate issued on 24th April 1990 which is issued in Marathi is even more curious than the certificate of 21st April 1990. This certificate records that it was because there were some erasures in the earlier certificate issued on 3rd September 1984 showing "non-use" of the vehicle, that the certificate was issued on 21st April 1990 showing correct dates. There is, however, nothing on record to show that in fact the vehicle was in "non-use" during the relevant period. The certificates obviously have been procured by the Appellant after the award was made, only with a view to defeat the claim of Respondent No.1.

The insurance premium has been paid for this period and, therefore, the cover note is in respect of the period from 20th October 1983 to 19th October 1984. It is difficult to accept the version of the Appellant that the certificates which are annexed to the Civil Application No.2998 of 1990 have been issued after due enquiry. Therefore, the question of the vehicle being in "non-use" at the relevant time does not arise. Furthermore, as held by the Tribunal, assuming the vehicle was in "non-use", there is no evidence on record to show that the vehicle was not actually brought out on the road during the relevant period. The certificates dated 21st April 1990 and 24th April 1990 purportedly issued by the Regional Transport Office, Ratnagiri cannot be relied on and are rejected.

12. However, there is no doubt that the Insurance Company did not have any opportunity to defend itself at the hearing of the application. The cover note shows that there is a limited liability of Rs.50,000/-. The Tribunal has awarded only an amount of Rs.36,000/- together with interest. The Insurance Company, however, must have an opportunity to oppose the claim before the Tribunal on the basis of the grounds available to it for opposing the application. The issue regarding "non-use" of the vehicle at the relevant date cannot be reopened now as the Tribunal has already found that the vehicle was in use and the certificates annexed to the Civil

Application filed by the Appellant do not seem to be genuine and are rejected as aforesaid. As observed above, the certificates do not indicate as to when the intimation was given by the Appellant that the vehicle was in "non-use" or would be in "non-use". Therefore, the certificates annexed to the Civil Application do not help the Appellant in any manner.

13. The claim is, therefore, remanded to be tried only on the question as to whether the Insurance Company is liable for payment of compensation in view of the insurance policy No.41579-07632 issued at Ratnagiri on 31st October 1983 for the period from 20th October 1983 to 19th October 1984. The issue regarding "non-use" will not be reopened at the hearing of the application.

14. The Tribunal to hear and decide the application within a period of three months from today.

15. First Appeal accordingly disposed of. No order as to costs.

16. Civil Application Nos.2998 of 1990 and 4367 of 2004 are disposed of as aforesaid.

17. Writ to go down forthwith.

18. Certified copy expedited.